

New AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HCS CSSB 20(FIN)

Page 1, line 1, following "**children**":

Insert "; **and relating to sentencing factors and penalties for crimes against pregnant women**"

Page 1, following line 7:

Insert a new bill section to read:

"* **Sec. 2.** AS 11 is amended by adding a new chapter to read:

Chapter 32. Enhanced Penalties.

Sec. 11.32.100. Penalties for crimes committed against pregnant women.

(a) Notwithstanding another provision of this title or AS 12, if a person commits a crime defined in this title against a pregnant woman who the person knew or should have known was pregnant that results in a miscarriage or stillbirth of a fetus, the crime shall be punished by a sentence that is double the sentence for the underlying crime.

(b) The penalties in (a) of this section do not apply to acts committed

(1) during a legal abortion to which the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, consented or for which the consent is implied by law;

(2) during any medical treatment of the pregnant woman or the fetus;

or

(3) by a pregnant woman against herself.

(c) In this section,

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth or by an induced abortion, resulting in the complete

expulsion or extraction of the fetus from a pregnant woman;

(2) "stillbirth" means the death of a fetus before the complete expulsion or extraction from a woman, other than by an induced abortion, irrespective of the duration of the pregnancy."

Renumber the following bill sections accordingly.

Page 5, lines 28 - 29:

Delete all material and insert:

"(64) "unborn child" means a member of the species Homo sapiens that is carried in the womb and that has attained viability; in this paragraph, "viability" means the ability to live outside of the mother's womb."

Page 7, following line 19:

Insert new bill sections to read:

"* Sec. 11. AS 12.55.127(c) is amended to read:

(c) If the defendant is being sentenced for

(1) escape, the term of imprisonment shall be consecutive to the term for the underlying crime;

(2) except as provided in paragraph (3) of this section, two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or 11.41.500 - 11.41.520;

(3) murder of an unborn child under AS 11.41.150 and murder of the unborn child's mother under AS 11.41.100 - 11.41.110, a consecutive term of imprisonment shall be imposed for the entire sentence for each crime.

* Sec. 12. AS 12.55.155(c) is amended to read:

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury

1 to three or more persons, other than accomplices;

2 (7) a prior felony conviction considered for the purpose of invoking a
3 presumptive range under this chapter was of a more serious class of offense than the
4 present offense;

5 (8) the defendant's prior criminal history includes conduct involving
6 aggravated or repeated instances of assaultive behavior;

7 (9) the defendant knew that the offense involved more than one victim;

8 (10) the conduct constituting the offense was among the most serious
9 conduct included in the definition of the offense;

10 (11) the defendant committed the offense under an agreement that the
11 defendant either pay or be paid for the commission of the offense, and the pecuniary
12 incentive was beyond that inherent in the offense itself;

13 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for
14 another felony charge or conviction or for a misdemeanor charge or conviction having
15 assault as a necessary element;

16 (13) the defendant knowingly directed the conduct constituting the
17 offense at an active officer of the court or at an active or former judicial officer,
18 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,
19 emergency medical technician, paramedic, ambulance attendant, or other emergency
20 responder during or because of the exercise of official duties;

21 (14) the defendant was a member of an organized group of five or
22 more persons, and the offense was committed to further the criminal objectives of the
23 group;

24 (15) the defendant has three or more prior felony convictions;

25 (16) the defendant's criminal conduct was designed to obtain
26 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
27 is slight;

28 (17) the offense was one of a continuing series of criminal offenses
29 committed in furtherance of illegal business activities from which the defendant
30 derives a major portion of the defendant's income;

31 (18) the offense was a felony

1 (A) specified in AS 11.41 and was committed against a spouse,
2 a former spouse, or a member of the social unit made up of those living
3 together in the same dwelling as the defendant;

4 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
5 has engaged in the same or other conduct prohibited by a provision of
6 AS 11.41.410 - 11.41.460 involving the same or another victim; or

7 (C) specified in AS 11.41 that is a crime involving domestic
8 violence and was committed in the physical presence or hearing of a child
9 under 16 years of age who was, at the time of the offense, living within the
10 residence of the victim, the residence of the perpetrator, or the residence where
11 the crime involving domestic violence occurred;

12 (19) the defendant's prior criminal history includes an adjudication as a
13 delinquent for conduct that would have been a felony if committed by an adult;

14 (20) the defendant was on furlough under AS 33.30 or on parole or
15 probation for another felony charge or conviction that would be considered a prior
16 felony conviction under AS 12.55.145(a)(1)(B);

17 (21) the defendant has a criminal history of repeated instances of
18 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
19 similar in nature to the offense for which the defendant is being sentenced under this
20 section;

21 (22) the defendant knowingly directed the conduct constituting the
22 offense at a victim because of that person's race, sex, color, creed, physical or mental
23 disability, ancestry, or national origin;

24 (23) the defendant is convicted of an offense specified in AS 11.71 and

25 (A) the offense involved the delivery of a controlled substance
26 under circumstances manifesting an intent to distribute the substance as part of
27 a commercial enterprise; or

28 (B) at the time of the conduct resulting in the conviction, the
29 defendant was caring for or assisting in the care of a child under 10 years of
30 age;

31 (24) the defendant is convicted of an offense specified in AS 11.71 and

1 the offense involved the transportation of controlled substances into the state;

2 (25) the defendant is convicted of an offense specified in AS 11.71 and
3 the offense involved large quantities of a controlled substance;

4 (26) the defendant is convicted of an offense specified in AS 11.71 and
5 the offense involved the distribution of a controlled substance that had been
6 adulterated with a toxic substance;

7 (27) the defendant, being 18 years of age or older,

8 (A) is legally accountable under AS 11.16.110(2) for the
9 conduct of a person who, at the time the offense was committed, was under 18
10 years of age and at least three years younger than the defendant; or

11 (B) is aided or abetted in planning or committing the offense by
12 a person who, at the time the offense was committed, was under 18 years of
13 age and at least three years younger than the defendant;

14 (28) the victim of the offense is a person who provided testimony or
15 evidence related to a prior offense committed by the defendant;

16 (29) the defendant committed the offense for the benefit of, at the
17 direction of, or in association with a criminal street gang;

18 (30) the defendant is convicted of an offense specified in AS 11.41.410
19 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
20 the victim in furtherance of the offense with the intent to make the victim
21 incapacitated; in this paragraph, "incapacitated" has the meaning given in
22 AS 11.41.470;

23 (31) the defendant's prior criminal history includes convictions for five
24 or more crimes in this or another jurisdiction that are class A misdemeanors under the
25 law of this state, or having elements similar to a class A misdemeanor; two or more
26 convictions arising out of a single continuous episode are considered a single
27 conviction; however, an offense is not a part of a continuous episode if committed
28 while attempting to escape or resist arrest or if it is an assault upon a uniformed or
29 otherwise clearly identified peace officer; notice and denial of convictions are
30 governed by AS 12.55.145(b), (c), and (d);

31 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the

1 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
 2 in the administrative offices of a school district if students are educated at that office;
 3 in this paragraph,

4 (A) "school bus" has the meaning given in AS 11.71.900;

5 (B) "school district" has the meaning given in AS 47.07.063;

6 (C) "school grounds" has the meaning given in AS 11.71.900;

7 **(33) the defendant is convicted of an offense specified in AS 11.41,**
 8 **commission of the offense involved physical injury to a pregnant woman, the**
 9 **defendant knew or reasonably should have known that the woman was pregnant,**
 10 **and the pregnant woman was carrying a nonviable fetus; in this paragraph,**
 11 **"nonviable" means that the fetus cannot survive outside of the mother's womb.**

12 * Sec. 13. The uncoded law of the State of Alaska is amended by adding a new section to
 13 read:

14 APPLICABILITY. AS 11.32.100, enacted by sec. 2 of this Act, and AS 12.55.155(c),
 15 as amended by sec. 12 of this Act, apply to crimes committed on or after the effective date of
 16 this Act."

SB 20: COMPARISON OF PROPOSALS

	Present Law	SB 20 (Dyson)	Amendment #1 (Kerttula)	Amendment #2 (Croft)
Post Viability – Miscarriage/Still Birth	“Disability” aggravator & Serious Physical Injury	Murder of Unborn Child – minimum sentences consecutively	Enhanced Penalty – double sentences	Murder of Unborn Child – entire sentence consecutively
Pre Viability - Miscarriage/Still Birth	“Disability” aggravator & Serious Physical Injury	Murder of Unborn Child – minimum sentences consecutively	Enhanced Penalty – double sentences	Enhanced Penalty – double sentences

NEW ~~SEN #4~~
Advantages of Amendment ~~#4~~ to SB 20

1. MOST SEVERE PENALTIES

- a. Increases penalties for harming an unborn child over all other proposals before the House.

2. AVOIDS CONSTITUTIONAL CHALLENGES

3. KEEPS FOCUS ON THE VICTIM.